THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	
Inventor: Stephen GOLD	: Confirmation No. 2882
U.S. Patent Application No. 10/684,207	: Group Art Unit: 2185
Filed: October 10, 2003	: Examiner: Samuel A. Dillon
For: LOADING OF MEDIA	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: BOARD OF PATENT APPEALS AND INTERFERENCES

BRIEF ON APPEAL

This brief is in furtherance of the Notice of Appeal, filed in this case on September 9, 2008.

The fees required under § 1.17(f) and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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I. Real Party in Interest

The real party in interest is Hewlett-Packard Development Company, L.P., a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II. Related Appeals and Interferences

There are no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

III. Status of Claims

A. Total Number of Claims in Application

There is a total of 27 claims in the application, which are identified as claims 1—27.

B. Status of all the Claims

Claims 1-27 are pending.

Claims 1-27 are rejected.

Claims canceled – None.

Claims allowed – None.

C. Claims on Appeal

Claims on appeal are claims 1-27.

IV. Status of Amendments

There are no outstanding un-entered amendments After Final before the Examiner.

V. Summary of Claimed Subject Matter

The present invention relates generally to a method, system and set of machine executable instructions for loading media.

Claim 1

Independent claim 1 recites a method comprising:

receiving a list comprising media and at least two backup devices, wherein a first medium of the list is assigned to a first backup device, and a second medium of the list is assigned to a second backup device; (See Instant specification in at least paragraphs 14, 15, 16, 19 and FIG. 2, element 205)

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and (See Instant specification in at least paragraphs 20-24 and FIG. 2, element 210)

presenting at least the media portion of the ordered list to a user. (See Instant specification in at least paragraphs 26, 27 and FIG. 2, element 215)

Claim 10

Independent claim 10 recites a method comprising:

receiving a list comprising media and at least two backup devices, wherein a first medium in the list is assigned to a first backup device, and a second medium in the list is assigned to a second backup device; (See Instant specification in at least paragraphs 14, 15, 16, 19 and FIG. 2, element 205)

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and (See Instant specification in at least paragraphs 20-24 and FIG. 2, element 210)

presenting at least the media portion of the ordered list to a user, wherein receiving the list comprises receiving a list of media from a user to be used for one or more future executions of one or more backup jobs associated with the backup devices, said method further comprising, before receiving the list, calculating a required number of scratch media needed for the future executions and presenting the required number of scratch media to the user. (See Instant specification in at least paragraphs 15, 16, 26-30, 34, 37-43 and FIG. 2, element 215, FIG. 5, and FIG. 7)

Claim 13

Independent claim 13 recites a system comprising:

a planner to receive a list comprising media and at least two backup devices, wherein a first medium in the list is assigned to a first backup device, and a second medium in the list is assigned to a second backup device, and to order the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and (See Instant specification in at least paragraphs 14-16, 19-24 and FIG. 2, elements 205, 210)

a user interface, communicatively coupled to the planner, to present at least the media portion of the ordered list to a user. (See Instant specification in at least paragraphs 26, 27 and FIGs. 4 and 6)

Claim 16

Independent claim 16 recites a system comprising:

a planner to receive a list comprising media and at least two backup devices, at least one medium in the list is assigned to a first backup device, and at least another medium in the list is assigned to a second backup device, and to order the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and (See Instant specification in at least paragraphs 14, 15, 16, 19 and FIG. 1, element 102 and FIG. 2, element 205)

a user interface, communicatively coupled to the planner, to present at least the media portion of the ordered list to a user, wherein said user interface is further to receive a list of media to be used for one or more future executions of one or more backup jobs associated with one of the at least two backup devices and to transmit the list to said planner and, wherein said planner is further to calculate a required number of scratch media needed for the future executions; and (See Instant specification in at least paragraphs 20-24 and FIG. 1, element 104 and FIG. 2, element 210)

wherein said user interface is further to present the required number of scratch media to a user. (See Instant specification in at least paragraphs 15, 16, 26-30, 34, 37-43 and FIG. 2, element 215, FIG. 5, and FIG. 7)

Claim 19

Independent claim 19 recites at least one machine-readable medium having stored thereon sequences of instructions, which, when executed by a machine, cause the machine to perform the actions of:

receiving a list comprising media and at least two backup devices, wherein a first medium of the list is assigned to a first backup device, and a second medium of the list is assigned to a second backup device; (See Instant specification in at least paragraphs 14, 15, 16, 19 and FIG. 2, element 205)

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and (See Instant specification in at least paragraphs 20-24 and FIG. 2, element 210)

presenting at least the media portion of the ordered list to a user. (See Instant specification in at least paragraphs 26, 27 and FIG. 2, element 215)

Claim 23

Independent claim 23 recites at least one machine-readable medium having stored thereon sequences of instructions, which, when executed by a machine, cause the machine to perform the actions of:

receiving a list comprising media and at least two backup devices, wherein a first medium in the list is assigned to a first backup device, and a second medium in

the list is assigned to a second backup device; (See Instant specification in at least paragraphs 14, 15, 16, 19 and FIG. 2, element 205)

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and (See Instant specification in at least paragraphs 20-24 and FIG. 2, element 210)

presenting at least the media portion of the ordered list to a user, said at least one machine-readable medium further comprising instructions which, when executed by the machine, (See Instant specification in at least paragraphs 26, 27 and FIG. 2, element 215) cause the machine to perform the actions of:

before receiving the list, calculating a required number of scratch media needed for one or more future executions of one or more backup jobs associated with the backup devices; (See Instant specification in at least paragraphs 15, 16, 26-30, 34, 37-43 and FIG. 2, element 215, FIG. 5, and FIG. 7)

presenting the required number of scratch media to the user; and (See Instant specification in at least paragraphs 15, 16, 26-30, 34, 37-43 and FIG. 2, element 215, FIG. 5, and FIG. 7)

wherein receiving the list comprises receiving a list of media from a user to be used for the future executions. (See Instant specification in at least paragraph 15, 16, and 29 and FIGs. 2, element 205, FIGs. 5 and 7)

VI. Grounds of Rejection to be Reviewed on Appeal

A. The issue is whether claims 1-9, 13-15, 19-22, and 24-27 are unpatentable under 35 U.S.C 103(a) as being obvious over *Bolin et al.* (US 5,664,146) in view of *Jennings* ("Using Access 97").

B. The issue is whether claims 10-12, 16-18, and 23 are unpatentable under 35 U.S.C 103(a) as being obvious over *Bolin et al.* in view of *Jennings* in view of *Kanai* (US Published Application 2002/0152181).

VII. Argument

A. Was the PTO correct in rejecting claims 1-9, 13-15, 19-22, and 24-27 under 35 U.S.C. 103(a) as being obvious over *Bolin et al.* in view of *Jennings*?

Claim 1

The rejection of claims 1-9, 13-15, 19-22, and 24-27 as being unpatentable over *Bolin* in view of *Jennings* is hereby traversed and respectfully requested to be reversed. There are at least five reasons claim 1 is patentable over *Bolin* in view of *Jennings*.

First, *Bolin*, singly or in combination with *Jennings*, fails to disclose or suggest at least ordering the list based on proximity of the remaining backup devices of the at least two backup devices to the first backup device as claimed in claim 1. *Bolin* fails to disclose sorting, proximity or otherwise, with respect to either cartridges or backup devices. The PTO's assertion regarding sorting a column in ascending or descending order notwithstanding, neither *Bolin* nor *Bolin* in combination with *Jennings* appears to disclose ordering of a list by physical location based on proximity of either cartridge or device. The result of sorting a column of *Bolin* according to a combination with *Jennings* would appear to be an ascending or descending sorting of said column (per *Jennings* description at page 83) and not a sort based on proximity. *Jennings* states only that the Sort Ascending button "[s]orts the records in ascending order, based on the current field" without disclosing a sort based on proximity. See *Jennings* at page 83. For at least this reason, reversal of the rejection is respectfully requested.

Second, *Bolin* fails to disclose either storage or determination of proximity of the physical locations, i.e., Vlt 17 R1, Vlt 14 R4, etc., referred to with respect to FIG. 5. The PTO appears to make an unwarranted leap from identification of physical locations to proximity of those same locations. Neither *Bolin* nor *Bolin* in combination with *Jennings* appears to disclose or suggest proximity of physical locations. For at least this reason, reversal of the rejection is respectfully requested.

Third, the PTO asserts in the Response to Amendments/Arguments section of the Final Office Action mailed on July 9, 2008, that *Jennings* teaches "sort[ing] that list by physical location." However, this is incorrect. *Jennings*, as per the above reference to page 83 of *Jennings*, appears to disclose solely sorting a column of records in either ascending or descending order based on the current field without disclosing or suggesting that the field is proximity-related. *Bolin* appears to only provide a home location column without providing corresponding proximity information or a mechanism for determining said proximity information. For at least this reason, reversal of the rejection is respectfully requested.

Fourth, the PTO leaps from an assertion that it would be "obvious to modify *Bolin* to display the physical location of each device in an equivalent way to the display of the cartridge location, and then **to sort that list by physical location** as taught by *Jennings*" to asserting that "*Bolin* in view of *Jennings* **does indeed disclose ordering the list based on proximity** of the remaining backup devices." See FOA at final paragraph bridging over from page 2 to page 3 (emphasis added). The PTO provides no support, i.e., no identification of any support in either reference and no articulation of a reasoned rationale, for the assertion. The PTO appears to have improperly

applied hindsight reasoning based on Applicant's subject matter to supply the missing disclosure and attempt to support the above leap from sorting by physical location to ordering the list based on proximity.

Fifth, *Bolin* positively recites a particular sequence for the list depicted in FIG. 5 which is not proximity-based. *Bolin* states that "[a]ctions should preferably be performed in the sequence listed." See *Bolin* at column 9, lines 66-67. That is, *Bolin* expresses a preference that the items listed in the "Action List" window 193 be sorted according to the order in which actions should be performed. Thus, *Bolin* appears to describe a particular sort for the actions which is not proximity-based. For at least this reason, reversal of the rejection is respectfully requested.

Based on at least the foregoing reasons, claim 1 is patentable over *Bolin* in view of *Jennings* and reversal of the rejection is respectfully requested. Claims 13 and 19 are patentable over *Bolin* in view of *Jennings* at least for reasons similar to those advanced above with respect to claim 1 and reversal of the rejection is respectfully requested.

Claims 2-9, 14-15, 20-22, and 24-27 depend respectively, either directly or indirectly, from claims 1, 13, and 19 include further features, and are patentable over *Bolin* in view of *Jennings* for at least the reasons advanced above with respect to claim 1. The rejection of claims 2-9, 14-15, 20-22, and 24-27 should be reversed.

Claim 6

Additionally with respect to claim 6, the PTO assertion that the claimed subject matter comprises nonfunctional descriptive material is incorrect and hereby traversed.

The order number, interpreted in the context of the instant specification (see specifically paragraph 23), is assigned based on physical proximity of data centers to each other. Contrary to the PTO assertion, the claimed subject matter does not relate to subjective interpretation of data and does patentably distinguish the claimed subject matter from the applied references. For at least this additional reason, reversal of the rejection of claim 6 is respectfully requested.

Claims 22, and 25-27

The rejection of claims 22 and 25-27 are traversed for at least additional reasons similar to those presented above with respect to claim 6 and reversal of the rejection is respectfully requested.

Claim 8

Additionally with respect to claim 8, the PTO assertion that in *Bolin* the "order number would be physical location" is incorrect and hereby traversed. The PTO has already indicated with respect to claim 1 that the home location of *Bolin* corresponds to the claimed physical location. The PTO is now attempting to twist the interpretation of *Bolin* to also include an order number which is not found in *Bolin*. The physical location of *Bolin* is not both a physical location and an order number as claimed. For at least this reason, reversal of the rejection of claim 8 is respectfully requested.

VIII. Argument

B. Was the PTO correct in rejecting claims 10-12, 16-18, and 23 under 35 U.S.C. 103(a) as being obvious over *Bolin et al.* in view of *Jennings* in view of *Kanai*?

Claim 10

The rejection of claims 10-12, 16-18, and 23 under 35 USC 103(a) as being unpatentable over *Bolin* in view of *Jennings* in view of Kanai is hereby traversed.

Claims 10-12, 16-18, and 23 are believed patentable over *Bolin* in view of *Jennings* and further in view of Kanai for at least reasons similar to those advanced above with respect to amended claim 1. Kanai fails to cure the above-noted deficiencies of *Bolin* and *Jennings* and reversal of the rejection is respectfully requested. For example, Kanai does not appear to disclose or suggest ordering a list based on proximity of backup devices, storing or determining proximity of physical locations, or sorting the list by physical location.

Based on each of the foregoing, claims 10-12, 16-18, and 23 are patentable over *Bolin* in view of *Jennings* and further in view of Kanai and reversal of the rejection is respectfully requested.

IX. Conclusion

Each of the PTO's rejections has been traversed. Appellant respectfully submits that all claims on appeal are considered patentable over the applied art of record. Accordingly, reversal of the PTO's Final Rejection is believed appropriate and courteously solicited.

If for any reason this Appeal Brief is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned, Appellant's attorney of record.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 08-2025 and please credit any excess fees to such deposit account.

Reversal of the rejection is in order.

Respectfully submitted,
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X. Claims Appendix

1. A method comprising:

receiving a list comprising media and at least two backup devices, wherein a first medium of the list is assigned to a first backup device, and a second medium of the list is assigned to a second backup device;

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and

presenting at least the media portion of the ordered list to a user.

2. The method of claim 1, further comprising before receiving the list, configuring a physical location for each of the backup devices.

3. The method of claim 2, wherein configuring the physical location comprises obtaining information for one or more site locations and assigning each of the backup devices to one of the site locations.

4. The method of claim 3, wherein configuring the physical location further comprises:

obtaining information for one or more data centers, each of the data centers associated with one of the site locations; and

assigning each of the backup devices to one of the data centers.

5. The method of claim 2, wherein configuring the physical location comprises assigning a grid location in a data center to at least one of the backup devices.

6. The method of claim 5, wherein configuring the physical location further comprises assigning an order number to each of the grid locations.

7. The method of claim 5, wherein assigning a grid location comprises for at least one of the backup devices, automatically assigning, to the backup device, a grid location of a system attached to the backup device.

8. The method of claim 1, wherein ordering the list comprises ordering the list by an order number associated with each of the backup devices.

9. The method of claim 1, wherein receiving the list comprises:

receiving a list of media from a user to be used for one or more future executions of one or more backup jobs associated with the backup devices.

10. A method comprising:

receiving a list comprising media and at least two backup devices, wherein a first medium in the list is assigned to a first backup device, and a second medium in the list is assigned to a second backup device;

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and

presenting at least the media portion of the ordered list to a user, wherein receiving the list comprises receiving a list of media from a user to be used for one or more future executions of one or more backup jobs associated with the backup devices, said method further comprising, before receiving the list, calculating a required number of scratch media needed for the future executions and presenting the required number of scratch media to the user.

11. The method of claim 10, wherein calculating comprises:

obtaining backup job information from one or more backup applications for the backup jobs; and

using the backup job information to calculate the required number of scratch media needed for the future executions.

12. The method of claim 10, wherein calculating the required number of scratch media comprises for at least one of the future executions, dividing an average historical backup size of the backup job by an average capacity of a media type associated with the backup job.

13. A system comprising:

a planner to receive a list comprising media and at least two backup devices, wherein a first medium in the list is assigned to a first backup device, and a second medium in the list is assigned to a second backup device, and to order the list by physical location of the at least

two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and

a user interface, communicatively coupled to the planner, to present at least the media portion of the ordered list to a user.

14. The system of claim 13, further comprising a configuration agent, communicatively coupled to said planner, to configure a physical location for each of the backup devices.

15. The system of claim 13, wherein said user interface is further to receive a list of media to be used for one or more future executions of one or more backup jobs associated with the backup device and to transmit the list to said planner.

16. A system comprising;

a planner to receive a list comprising media and at least two backup devices, at least one medium in the list is assigned to a first backup device, and at least another medium in the list is assigned to a second backup device, and to order the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and

a user interface, communicatively coupled to the planner, to present at least the media portion of the ordered list to a user, wherein said user interface is further to receive a list of media to be used for one or more future executions of one or more backup jobs associated with

one of the at least two backup devices and to transmit the list to said planner and, wherein said planner is further to calculate a required number of scratch media needed for the future executions; and

wherein said user interface is further to present the required number of scratch media to a user.

17. The system of claim 16, further comprising an integration agent, communicatively coupled to said planner, to receive backup job information from one or more backup applications and wherein said planner uses the backup job information to calculate the required number of scratch media.

18. The system of claim 17, wherein the backup job information includes an average historical backup size for one or more of the backup jobs and said planner uses the average historical backup size to calculate the required number of scratch media.

19. At least one machine-readable medium having stored thereon sequences of instructions, which, when executed by a machine, cause the machine to perform the actions of:

receiving a list comprising media and at least two backup devices, wherein a first medium of the list is assigned to a first backup device, and a second medium of the list is assigned to a second backup device;

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and

presenting at least the media portion of the ordered list to a user.

20. The medium of claim 19, wherein the instructions comprise instructions, which, when executed by the machine, cause the machine to perform the actions of before receiving the list, configuring a physical location for each of the backup devices.

21. The medium of claim 20, wherein the instructions for configuring the physical location comprise instructions, which, when executed by the machine, cause the machine to perform the actions of assigning a grid location in a data center to at least one of the backup devices.

22. The medium of claim 20, wherein the instructions for configuring the physical location comprise instructions, which, when executed by the machine, cause the machine to perform the actions of assigning an order number to each of the grid locations.

23. At least one machine-readable medium having stored thereon sequences of instructions, which, when executed by a machine, cause the machine to perform the actions of:

receiving a list comprising media and at least two backup devices, wherein a first medium in the list is assigned to a first backup device, and

a second medium in the list is assigned to a second backup device;

ordering the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device; and

presenting at least the media portion of the ordered list to a user, said at least one machine-readable medium further comprising instructions which, when executed by the machine, cause the machine to perform the actions of:

before receiving the list, calculating a required number of scratch media needed for one or more future executions of one or more backup jobs associated with the backup devices;

presenting the required number of scratch media to the user; and

wherein receiving the list comprises receiving a list of media from a user to be used for the future executions.

24. The method of claim 1, wherein the media are physically loaded into a backup device by a user in at least two different physical locations.

25. The method of claim 1, wherein the at least two backup devices are assigned to two different site locations and wherein the ordering comprises ordering the list by physical location of the site locations of the at least two backup devices.

26. The method of claim 4, wherein configuring the physical location further comprises:

assigning a global order number to a data center based on proximity of the data center to a first data center.

27. The method of claim 8, wherein the ordering the list by an order number comprises ordering the list by an order number indicative of the proximity of a backup device to the first backup device.

XI. Evidence Appendix

None.

XII. Related Proceedings Appendix

None.